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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,341	10/23/2003	Robert J. Dalias	DALS-001XX	8538
207	7590	11/17/2005	EXAMINER	
WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP			GUIDOTTI, LAURA C	
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BOSTON, MA 02109			PAPER NUMBER	

1744

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/692,341	<b>Applicant(s)</b> DALIAS, ROBERT J.	
	<b>Examiner</b> Laura C. Guidotti	<b>Art Unit</b> 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01292004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 7 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 7 recites that "said bristles are metallic", however claim 1 (from which claim 7 depends) in line 9 previously requires "a plurality of metallic bristles."

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8, from which claim 9 depends, recites, "said bristles are brass". However claim 9 recites "said bristles are stainless steel." It is unclear as to how bristles that are brass are also stainless steel. Did the applicant intend that the metallic bristles include more than one type of bristle material?

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6-7, 10, 12-14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Fassler, USPN 4,365,380.

Fassler discloses the claimed invention including a grill brush that includes a handle portion (leftmost portion of 10 as shown in Figure 1), a head portion (10) extending from the handle portion (see Figures 1-2), the head portion having a first surface (lowermost surface of 10 as shown in Figure 2), and a plurality of metallic bristles mounted to and extending from the first surface of the head portion (16, 18; "wire" brush, Column 4 Line 10), the plurality of bristles being of different lengths and providing a non-planar bristle surface contour (see Figures 2-4). The bristles are mounted to the surface in a predetermined pattern to form adjacent parallel rows of bristles of first and second lengths (Column 4 Lines 4-7, wherein the first length are bristles "16"). It appears that the parallel spaced grate bars have centerlines spaced by a first distance and the parallel rows of bristles of the second length (16) have centerlines spaced by the first distance (Figure 4). At least some of the plurality of bristles have varying lengths (tufts 16 and 18 are different lengths) and the plurality of bristles are mounted to the first surface in a pattern to provide a bristle surface contour that generally engages the top surface and at least a portion of the side surfaces of the grate bars (see Figure 4) and the bristle contour is specified to generally correspond to the grate surface contour (see Figure 4). The head portion has a front end opposing the handle (the rightmost end of 10 as shown in Figure 2) and the brush further includes a metallic scraper mounted to the front end (14; Column 5 Lines 32-33). The head

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portion and handle are an integral structure (10; see Figures) made of wood or plastic (Column 3 Lines 53-58). A portion of the plurality of bristles are molded into the head portion (Column 4 Lines 10-14).

4. Claims 1-7 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Dugrenier, USPN 4,286,349.

Dugrenier discloses the claimed invention including a grill brush that includes a handle portion (15), a head portion (11) extending from the handle portion (see Figure 1), the head portion having a first surface (13), and a plurality of metallic bristles mounted to and extending from the first surface of the head portion (12, 14; Column 1 Lines 37-40), the plurality of bristles being of different lengths and providing a non-planar bristle surface contour (see Figure 2; Column 1 Lines 41-44). The plurality of bristles are mounted to the first surface in a predetermined pattern to form adjacent generally parallel rows of bristles of first and second lengths (see Figures 1-4), wherein the first length is greater than the second length (wherein the first length is the length of "14"). The parallel rows of bristles of a second length have centerlines spaced apart by a first distance defined by the centerlines of parallel spaced grate bars (Column 1 Lines 6-11; Figures 2-4; the bristles "12" are spaced by a distance based on a first distance determined by the grate of a grill it is intended to clean). The plurality of bristles have varying lengths and are mounted to the first surface in a pattern to provide a bristle surface contour that engages the top surface and at least a portion of the side surfaces of the grate bars (Column 2 Lines 21-23). The bristles surface contour includes recesses spaced by a first distance defined by the grate bars (see Figures 1-2). The

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surface contour is specified to generally correspond to a grate surface contour (see Figures; Column 1 Lines 6-11). The recesses are "generally" rectangular (see Figures).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carton, USPN 5,479,673 in view of Fassler, USPN 4,365,380.

Carton discloses the claimed invention including a grill cleaning brush having a handle portion (1), a head portion (3) having a first surface (surface where bristles "5" extend and where reference numeral "4" is indicated), and a plurality of metallic bristles mounted and extending from the first surface of the head portion (see Figures 1-2; Column 2 Line 38). The head portion has a front end opposing the handle (leftmost end as shown in Figures 1-2) and the grill brush further includes a scraper mounted to the front end (9) and an abrasive pad supporting member extending from the head portion

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(portion of "3" near means "6", see Figures 1-2), the grill brush further including an abrasive pad mounted to the supporting member (7; Column 2 Lines 49-50). The head portion and handle portion are an integral structure (see Figure 2; Column 2 Lines 42-47). Carton does not disclose that the bristles are of different lengths and provide a non-planar bristle surface contour or specifically that the scraper is metallic.

Fassler discloses all elements above including bristles that are different lengths and a scraper that is metallic (14; Column 4 Lines 44-47) for scraping grilling surfaces.

It would have been obvious for one of ordinary skill in the art to modify the bristle lengths of Carton to have different lengths and provide a non-planar bristle surface contour, as Fassler teaches, in order to accommodate shaping of grill grates and it would have been obvious to construct the scraper of Carton from metal, as Fassler also teaches, in order to sufficiently scrape grill grate surfaces.

6. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fassler, USPN 4,365,380 in view of Daw, USPN 6,125,493.

Fassler discloses all elements above including that the bristles are metallic. Fassler does not disclose a specific bristle metal material such as brass or stainless steel.

Daw discloses a barbeque brush that has scraping bristles that comprise of brass (Column 2 Lines 49-51).

It would have been obvious for one of ordinary skill in the art to construct the bristles of Fassler from brass, as Daw teaches, in order to sufficiently clean and remove debris from grill cleaning surfaces and further it would have been obvious to one of

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ordinary skill in the art at the time the invention was made to have some or all of the bristles be comprised of stainless steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carton, USPN 5,479,673 and Fassler, USPN 4,365,380 as applied to Claim 1, in further view of Connor, USPN 1,919,010.

Carton and Fassler disclose all elements above and Carton further disclose "eyes" (or staples) that secure bristles to the brush head (Column 2 Lines 35-38), however they do not disclose that the bristles have U-shaped portions.

Connor discloses metal bristles (11) that have U-shaped portions (since bristles "11" are folded, see Figures 1-2; Page 1 Lines 64-66) that are extended through an eye (the staple 15). There is a plurality of the eyes (one for each tuft of metal bristles, see Figures). The eyes are press fit into corresponding recesses (12) within a first surface (top surface of 10 facing upwardly as shown in Figure 2) to securely retain a plurality of bristles within the head (Page 1 Lines 61-80). Connor does not state what material the eyes are constructed of.

It would have been obvious to secure the bristles by staples of Carton and Fassler, by providing U-shaped portions extending through eyes (or staples) being fit into corresponding recesses, as Connor teaches, so that metal bristles are sufficiently secured and held within a brush head and furthermore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the eyes or



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staples be metallic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 2005/0160544 to Geller discloses a grill brush of metallic bristles having different lengths. However, the filing date of Geller is after the applicant's.

US 2004/0226577 to Schaaf discloses a cleaning system for cooking systems wherein the cleaning head has cleaning elements at different lengths and a non-planar surface to associate with contours of the cooking surface to be cleaned.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Guidotti whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*LCG*  
LCG

09 November 2005



MARK SPISICH  
PRIMARY EXAMINER  
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1700